

1
2 UNITED STATES DISTRICT COURT
3 FOR THE NORTHERN DISTRICT OF CALIFORNIA
4 OAKLAND DIVISION
5

6 OSCAR LITO JAOJOCO,

7 Plaintiff,

8 vs.

9 CANDY ROCHA, MARCO ROCHA, and
10 DOES 1 to 5, inclusive,

11 Defendants.

Case No: C 10-4560 SBA

ORDER REMANDING ACTION

12
13 On August 12, 2010, Plaintiff Oscar Lito Jaojoco filed an unlawful detainer action
14 against Defendants Candy Rocha and Marco Rocha in San Mateo County Superior Court.
15 Plaintiff allegedly purchased the residence in which Defendants are residing through a
16 judicial foreclosure sale. On October 8, 2010, Defendants, who are acting pro se, filed a
17 notice of removal. Though no federal claims are alleged in the pleadings, Defendants
18 predicate the removal on the basis of diversity jurisdiction.

19 A district court has “a duty to establish subject matter jurisdiction over the removed
20 action sua sponte, whether the parties raised the issue or not.” United Investors Life Ins. Co. v.
21 Waddell & Reed, Inc., 360 F.3d 960, 967 (9th Cir. 2004); accord Attorneys Trust v. Videotape
22 Computer Prods., Inc., 93 F.3d 593, 594-95 (9th Cir. 1996) (lack of subject matter jurisdiction
23 may be raised at any time by either party or by the court sua sponte). The federal removal
24 statute permits the removal of an action which could have been brought originally in federal
25 court. See 28 U.S.C. § 1441(a). “The burden of establishing federal jurisdiction is on the party
26 seeking removal, and the removal statute is strictly construed against removal jurisdiction.”
27 Prize Frize Inc. v. Matrix Inc., 167 F.3d 1261, 1265 (9th Cir.1999). A district court must
28 remand a case to state court “if at any time before the final judgment it appears that the district

1 court lacks subject matter jurisdiction.” 28 U.S.C. § 1447(c); Kelton Arms Condominium
2 Owners Ass’n v. Homestead Ins. Co., 346 F.3d 1190, 1192 (9th Cir.2003) (“[W]e have held
3 that the district court must remand if it lacks jurisdiction”) (citing Sparta Surgical Corp. v.
4 Nat’l Ass’n Sec. Dealers, Inc., 159 F.3d 1209, 1211 (9th Cir. 1998)).


5 District courts have diversity jurisdiction over all civil actions “where the matter in
6 controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is
7 between ... citizens of different States.” 28 U.S.C. § 1332(a). The amount in controversy is
8 determined by the amount of damages or the value of the property that is the subject matter of
9 the action. Hunt v. Washington State Apple Advertising Comm’n, 432 U.S. 433 (1977). The
10 diversity statute is strictly construed, and any doubts are resolved against finding jurisdiction.
11 Kantor v. Wellesley Galleries, Ltd., 704 F.2d 1088, 1092 (9th Cir. 1983). Because the
12 citizenship of the parties is a jurisdictional fact in diversity actions, the burden is on the
13 plaintiff--the party invoking federal jurisdiction--to plead and prove such facts. Bautista v. Pan
14 American World Airlines, Inc., 828 F.2d 546, 552 (9th Cir. 1987).

15 Here, both the Complaint and the Notice of Removal are silent as to the citizenship of
16 Plaintiff and Defendants. In addition, Defendants have not alleged facts to establish that the
17 minimum amount is in controversy. The damages sought in the Complaint consist of the
18 “reasonable rental value of the property” in the amount of \$75.00 per day. Compl. ¶ 8.
19 Plaintiff alleges that such sum began accruing on July 29, 2010, when he served Defendants
20 with a notice to surrender possession. Id. ¶ 6. Thus, when the action was removed, seventy-
21 two days of rent had accrued. At a rental rate of \$75.00 per day, the amount of accrued rent
22 was \$5,400—well below the \$75,000 jurisdictional minimum. Remand is therefore warranted.
23 See Gaus v. Miles, Inc., 980 F.2d 564, 567 (9th Cir. 1992) (lack of specific facts demonstrating
24 that the amount in controversy at the time of removal met the jurisdictional minimum justified
25 remand). Accordingly,

26 IT IS HEREBY ORDERED THAT the instant action is REMANDED to San Mateo
27 County Superior Court. The Clerk shall terminate all pending matters and close the file.
28

IT IS SO ORDERED.

Dated: November 1, 2010


SAUNDRA BROWN ARMSTRONG
United States District Judge

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 OSCAR L. JAOJOCO,
5
6 Plaintiff,

7 v.

8 MARCO ROCHA et al,
9
10 Defendant.

Case Number: CV10-04560 SBA

CERTIFICATE OF SERVICE

11
12 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
13 Court, Northern District of California.

14 That on November 2, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said
15 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing
16 said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
17 located in the Clerk's office.

18 Candy Rocha
19 1259 Madera Avenue
20 Menlo Park, CA 94025

21 Marco Rocha
22 1259 Madera Avenue
23 Menlo Park, CA 94025

24 Dated: November 2, 2010

Richard W. Wieking, Clerk

By: LISA R CLARK, Deputy Clerk